

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANGELO D. JOHNSON,

Plaintiff,

REPORT AND
RECOMMENDATION
20-CV-6551-FPG-MJP

vs.

PA J. PEREZ, et al.,

Defendants.

On February 9, 2022, this Court held a scheduling conference at which plaintiff Angelo D. Johnson (“Plaintiff”) did not appear. Plaintiff was provided with notice of the conference via the Court’s calendar event, which set the conference for this date at 10:30 a.m. Notice was mailed on January 14, 2022, to Plaintiff’s last known address as listed on the docket, Good Sam Hospital¹ 255 Lafayette Ave. Suffern, NY 10901. The copy mailed to Plaintiff was returned to the Court on March 21, 2022, as Plaintiff no longer resided at the residence and did not provide a new address to reach him. (ECF No 30.) Other attempts to reach out to defendant were returned on June 21, 2022, July 26, 2022, and August 24, 2022. (ECF Nos 34, 36, 38.) On August 29, 2022, the Court called Good Samaritan Hospital and verified that the address Plaintiff provided was correct. The Court inquired as to whether Plaintiff still resided there. While Good Samaritan could not state that Plaintiff Angelo D. Johnson was a patient there, they could however verify he was not presently at the hospital. On

¹ Good Samaritan Hospital

August 30, 2022, the Clerk of Court issued an order to show cause, which was also returned undelivered. On September 15, 2022, the Court met with opposing counsel to see if there were any methods to reach Plaintiff. Defense Counsel unfortunately was unable to reach Plaintiff as well. With no other options and with the Court having taken extraordinary measures to reach Mr. Johnson, the Court regrettably recommends that the case be dismissed for failure to prosecute.

Accordingly, the Court hereby:

RECOMMENDS that the matter filed under Civil Action Number 6: 20-CV-6551-FPG-MJP be dismissed with prejudice, and the Court further

RECOMMENDS that this matter should be deemed closed.

Pursuant to 28 U.S.C. § 636(b)(1), it is hereby

ORDERED, that this Report and Recommendation be filed with the Clerk of the Court.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of this Court within fourteen (14) days after receipt of a copy of this Report and Recommendation in accordance with the above statute, Fed. R. Civ. P. 72(b), 6(a) and 6(e) and Local Rule 72.

The district court will ordinarily refuse to consider on de novo review arguments, case law and/or evidentiary material which could have been, but was not, presented to the magistrate judge in the first instance. *See, e.g., Paterson-Leitch Co., Inc. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985 (1st Cir. 1988).

Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. *Thomas v. Arn*, 474 U.S. 140 (1985); *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15 (2d Cir. 1989); *Wesolek v. Canadair Ltd.*, 838 F.2d 55 (2d Cir. 1988).

The parties are reminded that, pursuant to Rule 72(b) of the Local Rules for the Western District of New York, "[w]ritten objections . . . shall specifically identify

the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority.” **Failure to comply with the provisions of Rule 72(b), or with the similar provisions of Rule 72(a) (concerning objections to a Magistrate Judge’s Decision and Order), may result in the District Court’s refusal to consider the objection.**

Let the Clerk send a copy of this Order and a copy of the Report and Recommendation to the attorney for the defendant, and the plaintiff.

IT IS SO ORDERED.

DATED: October 11, 2022
Rochester, New York



MARK W. PEDERSEN
United States Magistrate Judge